

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

JEREMY A. CROZIER,

Plaintiff,

vs.

ADAM ENDEL, *et al.*,

Defendants.

3:09-cv-00535-LRH-RAM

**ORDER**

This is a *pro se* prisoner civil rights complaint filed pursuant to 42 U.S.C. § 1983. Plaintiff's application to proceed *in forma pauperis* has been granted. (Docket #9). The Court now reviews the complaint.

**I. Screening Pursuant to 28 U.S.C. § 1915A**

Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1),(2). *Pro se* pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

1 In addition to the screening requirements under § 1915A, pursuant to the Prison Litigation  
2 Reform Act of 1995 (PLRA), a federal court must dismiss a prisoner's claim, "if the allegation of  
3 poverty is untrue," or if the action "is frivolous or malicious, fails to state a claim on which relief  
4 may be granted, or seeks monetary relief against a defendant who is immune from such relief." 28  
5 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon which relief can be  
6 granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and the court applies the same  
7 standard under § 1915 when reviewing the adequacy of a complaint or an amended complaint.  
8 When a court dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend  
9 the complaint with directions as to curing its deficiencies, unless it is clear from the face of the  
10 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70  
11 F.3d 1103, 1106 (9th Cir. 1995).

12 Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v.*  
13 *Laboratory Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a  
14 claim is proper only if it is clear that the plaintiff cannot prove any set of facts in support of the  
15 claim that would entitle him or her to relief. *See Morley v. Walker*, 175 F.3d 756, 759 (9th Cir.  
16 1999). In making this determination, the court takes as true all allegations of material fact stated in  
17 the complaint, and the court construes them in the light most favorable to the plaintiff. *See Warshaw*  
18 *v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996). Allegations of a *pro se* complainant are held to  
19 less stringent standards than formal pleadings drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5,  
20 9 (1980); *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). While the standard under Rule  
21 12(b)(6) does not require detailed factual allegations, a plaintiff must provide more than mere labels  
22 and conclusions. *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1964-65 (2007). A formulaic  
23 recitation of the elements of a cause of action is insufficient. *Id.*; *see Papasan v. Allain*, 478 U.S.  
24 265, 286 (1986).

25 Additionally, a reviewing court should "begin by identifying pleadings [allegations] that,  
26 because they are no more than mere conclusions, are not entitled to the assumption of truth."  
27 *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1950 (2009). "While legal conclusions can provide the  
28 framework of a complaint, they must be supported with factual allegations." *Id.* "When there are

1 well-pleaded factual allegations, a court should assume their veracity and then determine whether  
 2 they plausibly give rise to an entitlement to relief.” *Id.* “Determining whether a complaint states a  
 3 plausible claim for relief [is] a context-specific task that requires the reviewing court to draw on its  
 4 judicial experience and common sense.” *Id.*

5 Finally, all or part of a complaint filed by a prisoner may therefore be dismissed *sua sponte* if  
 6 the prisoner’s claims lack an arguable basis either in law or in fact. This includes claims based on  
 7 legal conclusions that are untenable (e.g., claims against defendants who are immune from suit or  
 8 claims of infringement of a legal interest which clearly does not exist), as well as claims based on  
 9 fanciful factual allegations (e.g., fantastic or delusional scenarios). *See Neitzke v. Williams*, 490  
 10 U.S. 319, 327-28 (1989); *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

## 11 **II. Complaint in the Instant Action**

12 Plaintiff names the following defendants in the complaint: Associate Warden Adam Endel,  
 13 Nevada Attorney General Catherine Cortez Masto, Corrections Caseworker Claude Willis,  
 14 Associate Warden Debra Brooks, Warden E.K. McDaniel, NDOC Deputy Director Greg Cox,  
 15 NDOC Director Howard Skolnik, Inspector General Agent Jerry Thompson, Governor Jim Gibbons,  
 16 Investigator Ashcroft, Corrections Caseworker Mark Drain, Corrections Caseworker Michael  
 17 Oxbow, Inspector General Patrick Conmay, Associate Warden Renee Baker, Correctional Officer  
 18 Robert Huston, Correctional Officer Robert Sedlacek, Nevada Secretary of State Ross Miller,  
 19 Correctional Officer Tom Tolbert, and “John Doe” correctional officers. Plaintiff seeks declaratory  
 20 relief, injunctive relief, and damages.

### 21 **A. Count I**

22 Plaintiff contends that he was denied equal protection. “Prisoners are protected under the  
 23 Equal Protection Clause of the Fourteenth Amendment from invidious discrimination based on  
 24 race.” *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974); *see also Turner v. Safley*, 482 U.S. 78, 84  
 25 (1987); *Serrano v. Francis*, 345 F.3d 1071, 1081-82 (9<sup>th</sup> Cir. 2003); *Johnson v. California*, 207 F.3d  
 26 650, 655 (9<sup>th</sup> Cir. 2000) (per curium). To state a claim for a violation of the Equal Protection Clause,  
 27 the prisoner must allege evidence of discriminatory intent. *See Washington v. Davis*, 426 U.S. 229,  
 28 239-40 (1976); *see also Serrano*, 345 F.3d at 1082.

1 In Count I of the complaint, plaintiff makes allegations concerning his request for an  
2 investigation of staff misconduct within the Nevada Department of Corrections (NDOC). Plaintiff  
3 alleges that various defendants failed to properly investigate and failed to uphold NDOC policies.  
4 Plaintiff fails to state a claim against any defendant for a denial of equal protection. Plaintiff has  
5 alleged no facts to indicate that defendants acted with discriminatory intent, or treated him  
6 differently than some other class of inmates. Plaintiff fails to state a claim for an equal protection  
7 violation in Count I of the complaint, and amendment would be futile. As such, Count I is dismissed  
8 with prejudice.

9 **B. Count II**

10 Just as in Count I, plaintiff contends that he was denied equal protection. In Count II,  
11 plaintiff again makes allegations concerning his request for an investigation of staff misconduct.  
12 Plaintiff has alleged no facts to indicate that defendants acted with discriminatory intent, or treated  
13 him differently than some other class of inmates. *See Washington v. Davis*, 426 U.S. 229, 239-40  
14 (1976); *see also Serrano*, 345 F.3d at 1082. Plaintiff fails to state a claim for an equal protection  
15 violation in Count II, and amendment would be futile. Count II is dismissed with prejudice.

16 **C. Count III**

17 In Count III, plaintiff asserts a denial of access to the courts, a denial of equal protection, and  
18 illegal seizure under the Fourth Amendment. Plaintiff alleges that defendant Thompson was  
19 assigned to investigate his claim of staff misconduct. Plaintiff alleges that defendant Thompson  
20 refused to review plaintiff's evidence, and instead told plaintiff that he would inform plaintiff  
21 whether he needed any evidence that plaintiff had in his possession. Plaintiff contends that  
22 defendant Thompson failed to conduct an adequate and meaningful investigation. Plaintiff asserts  
23 that defendant Thompson and defendant Ashcroft conspired to stop plaintiff from pursuing his staff  
24 misconduct claim. Plaintiff alleges that defendants Conmay and Thompson did not return his  
25 evidence of staff misconduct, and this prevented plaintiff from pursuing litigation. Plaintiff asserts  
26 that defendants Conmay, Thompson, McDaniels, Baker, Gibbons, Miller, Cortez-Masto, Skolnik,  
27 and Cox promoted policies that prevented plaintiff from knowing anything about the staff  
28 misconduct investigation. Plaintiff further alleges that he "was refused all court access through the

1 denial of law library, as stated in Crozier v. Endel et al., 3:09-cv-326,” a case that plaintiff filed in  
2 this Court.

### 3 **1. Denial of Access to the Courts Claim**

4 Regarding plaintiff’s claim of denial of access to the courts, plaintiff alleges that he “was  
5 refused all court access through the denial of law library, as stated in Crozier v. Endel et al., 3:09-cv-  
6 326,” a case that plaintiff filed in this Court. Plaintiff admits on the face of the complaint that he  
7 made this same allegations regarding denial of access to the courts in another federal lawsuit.  
8 Plaintiff may not bring repetitive actions alleging the same facts. The claim of denial of access to  
9 the courts is duplicative of plaintiff’s action filed in this Court under case number 3:09-cv-326-RCJ-  
10 RAM. As such, the denial of access to the courts claim in the instant action is dismissed with  
11 prejudice.

### 12 **2. Equal Protection Claim**

13 Plaintiff contends that he was denied equal protection. Plaintiff has alleged no facts to  
14 indicate that defendants acted with discriminatory intent, or treated him differently than some other  
15 class of inmates. *See Washington v. Davis*, 426 U.S. 229, 239-40 (1976); *see also Serrano*, 345 F.3d  
16 at 1082. Plaintiff fails to state a claim for an equal protection violation in Count III of the complaint,  
17 and amendment would be futile. The equal protection claim is dismissed with prejudice.

### 18 **3. Fourth Amendment Claim**

19 Plaintiff contends that he was subjected to an unlawful seizure in violation of the Fourth  
20 Amendment, alleging that defendants Conmay and Thompson failed to return his evidence of staff  
21 misconduct. Prisoners have no Fourth Amendment right of privacy in their cells, and no Fourth  
22 Amendment right to prevent searches and seizures of property. *See Hudson v. Palmer*, 468 U.S.  
23 517, 525-26 (1984); *Mitchell v. Dupnik*, 75 F.3d 517, 522 (9<sup>th</sup> Cir. 1996). Plaintiff’s Fourth  
24 Amendment claim is dismissed with prejudice for failure to state a claim.

### 25 **D. Count IV**

26 In Count IV, plaintiff asserts that his First Amendment rights were violated. Plaintiff alleges  
27 that he was denied access to the courts. Plaintiff sought information from defendant Tolbert, a  
28 correctional officer whom plaintiff alleges had information related to one of plaintiff’s civil lawsuits.

1 Plaintiff alleges that defendants prevented him from obtaining information he needed to prosecute a  
 2 civil lawsuit. Plaintiff further alleges that he has no physical access to the law library, “as stated in  
 3 *Crozier v. Endel et al.*, 3:09-cv-326 filed in the U.S. District Court.”

4 A prisoner alleging a violation of his right of access to the courts must have suffered “actual  
 5 injury.” *Lewis v. Casey*, 518 U.S. 343, 349-50 (1996). The right to access the courts is limited to  
 6 direct criminal appeals, habeas corpus proceedings, and civil rights actions challenging conditions of  
 7 confinement. *Id.* at 354-55. “An inmate cannot establish relevant actual injury simply by  
 8 establishing that his prison’s law library or legal assistance program is sub-par in some theoretical  
 9 sense.” *Id.* at 351. Rather, the inmate “must go one step further and demonstrate that the library or  
 10 legal assistance program hindered his efforts to pursue a legal claim.” *Id.* The actual-injury  
 11 requirement mandates that an inmate “demonstrate that a nonfrivolous legal claim had been  
 12 frustrated or was being impeded.” *Id.* at 353. In *Lewis v. Casey*, the Supreme Court defined  
 13 prisoners’ right of access to the courts as simply the “right to bring to court a grievance.” *Id.* at 354.  
 14 Moreover, the Court specifically rejected the notion that the state must enable a prisoner to “litigate  
 15 effectively once in court.” *Id.* (quoting and disclaiming language contained in *Bounds v. Smith*, 430  
 16 U.S. 817, 825-26 (1977)); *see also Cornett v. Donovan*, 51 F.3d 894, 898 (9<sup>th</sup> Cir. 1995)  
 17 (determining that prisoners’ right of access to the courts is limited to the pleading stage of a civil  
 18 rights action or petition for writ of habeas corpus).

19 In the instant case, plaintiff alleges that defendants prevented him from obtaining  
 20 information he needed to prosecute a civil lawsuit and that he has no physical access to the law  
 21 library, “as stated in *Crozier v. Endel et al.*, 3:09-cv-326 filed in the U.S. District Court.” Plaintiff  
 22 has not been hindered from filing federal civil lawsuits in this Court. The Court takes judicial notice  
 23 of the large number of civil cases that plaintiff has filed in this Court, including, but not limited to  
 24 the following case numbers: 3:09-cv-326-RCJ-RAM; 3:09-cv-00533-RCJ-RAM; 3:09-cv-00694-  
 25 LRH-RAM; 3:09-cv-00755-LRH-VPC; 3:10-cv-00082-LRH-VPC; 3:10-cv-00208-HDM-VPC;  
 26 3:10-cv-00328-RCJ-RAM; and 3:10-cv-00371-HDM-RAM.<sup>1</sup> The many cases filed by plaintiff in

---

27  
 28 <sup>1</sup> The court may take judicial notice of court records. *Valerio v. Boise Cascade Corp.*, 80 F.R.D. 626, 635 n.1 (N.D. Cal. 1978), *aff’d*, 645 F.2d 699 (9<sup>th</sup> Cir.), *cert. denied*, 454 U.S. 1126 (1981).

1 this Court indicates that his right to access the courts is not being impeded. A prisoners' right of  
2 access to the courts is limited to the pleading stage of a civil rights action, *Cornett v. Donovan*, 51  
3 F.3d 894, 898 (9<sup>th</sup> Cir. 1995), and it is clear that plaintiff has had adequate opportunity to file civil  
4 rights actions. Plaintiff's allegations in Count IV fail to state a claim for denial of access to the  
5 courts. Count IV is dismissed with prejudice.

6 **III. Conclusion**

7 **IT IS THEREFORE ORDERED** that the complaint and this entire action are **DISMISSED**  
8 **WITH PREJUDICE.**

9 **IT IS FURTHER ORDERED** that the Clerk shall enter judgment accordingly.

10 Dated this 10th day of December, 2010.

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



---

LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE